

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1244 OF 2024

Shoban Ali Liyakat Ali Shaikh

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Anil G. Lalla a/w Mr. Yash Pulekar, Ms. Ankita Rathod, Mr. Rithika Yerra, and Mr. Rohit Shisatkar, Advocates for Applicant i/b Lalla and Lalla for Applicant.
- Mr. Hitendra J. Dedhia, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 02, 2025.

P.C.:

1. This is an Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Regular Bail in connection with C.R.No. 46 of 2023 registered with Anti – Narcotic Cell, Kandivali Unit for offences punishable under Sections 8 (c) and 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’). Applicant is arrested on 15.05.2023 and he is incarcerated for 1 year 10 months 18 days.

2. It is prosecution case that while patrolling on 15.05.2023 at about 18:30 hours near Oshiwara Road, Jogeshwari Applicant – Accused was found behaving suspiciously alongwith a lady. The patrolling team questioned them about their details and they gave

evasive answers. Applicant was appraised of his right under Section 50 of the NDPS and asked him if he wanted to be searched before a Gazetted Officer and Magistrate and accordingly arrangements would be made to which he denied. On search, 105 grams of Mephedrone (commonly known as 'MD') was recovered. The contraband was duly seized, sealed, marked and offence was registered under Sections 8 (c) and 22 (c) of NDPS Act.

3. Mr. Lalla, learned Advocate for the Applicant would submit that Applicant is falsely implicated in the present crime. He would submit that there is a clear dichotomy in the prosecution case as from the panchanama dated 15.05.2023 appended at page No. 44 of the Application it is seen that during regular patrolling Applicant alongwith a lady were found behaving suspiciously and both were apprehended and questioned about their details. He would submit that on perusal of the witness statement recorded on 19.05.2023 appended at page No. 76 it is seen that the raiding party were already present at the spot which casts a doubt on the prosecution case. He would submit that there is a clear transgression of the mandatory provision under Section 52A(3) which prescribe Application to the Magistrate by issuing a Certificate in Form 5 as per Rules 8 and 18 of the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 which makes the prosecution case highly questionable.

4. He would urge the Court to consider the age of the Applicant being 22 years old and he having no criminal antecedents. He would submit that Applicant is arrested on 15.05.2023 and is incarcerated for more than 1 year 10 months 18 days pending trial. Investigation being completed, chargesheet being filed, commencement and completion of trial in the near foreseeable future is doubtful. Hence he would urge the Court to allow the Application.

5. **PER CONTRA**, Mr. Dedhia, learned APP would vehemently oppose grant of bail to Applicant. He would submit that offence is of a serious nature as recovery of alleged contraband is of commercial quantity. He would submit that bar of Section 37 of NDPS Act has to be overcome by Applicant. He would submit that Court while granting bail must be fully satisfied that there are reasonable grounds for believing that Applicant is not guilty of such offence and he is not likely to commit any offence while on bail. He would submit that such offences are offences against Society at large and will have to be viewed by Court very strictly without showing any leniency. Furthermore, there exists a likelihood of Applicant tampering with evidence and influencing witnesses if released on bail. Hence he would urge the Court to reject the Bail Application.

6. *Prima facie* on perusal of record it is seen that Applicant was apprehended at the time of patrolling however *prima facie* there is a

clear dichotomy on the face of record. Section 52A (3) of the NDPS Act contemplates allowing the Application by Magistrate by issuing the Certificate in Form 5 as per Rules 8 and 18 of the Narcotics Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. Form 5 specifically lists the Application to be made and certificate to be given thereon by the Magistrate together. However *prima facie* on perusal of the Certificate issued it is seen that it is in continuity with the Inventory Panchanama itself appended at page No. 49 which is not in consonance with the statutory procedure which is fatal to the prosecution case. Needless to state that complicity of the Applicant can be proved at the stage of trial. Applicant's young age and his incarceration for 1 year 10 months 18 days, pending trial and no criminal antecedents further persuades me to consider the Applicant's case.

7. In the following decisions of the Supreme Court and various High Courts concerning such detention and imprisonment of undertrial prisoner / accused on being apprehended with commercial quantity of various contrabands, the Courts have in the backdrop of the aforementioned propositions exercised its unfettered jurisdiction and discretion in releasing an undertrial on bail on account of long incarceration by using its discretionary powers.

8. In the case of *Nitish Adhikary alias Bapan Vs. State of West*

Bengal¹ the Supreme Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year and 7 months despite being alleged to be in possession of commercial quantity of contraband.

9. In the case of ***Babor Ali Mondal Vs. State of West Bengal²*** the Supreme Court considering the incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year and 4 months.

10. In the case of ***Sukhvinder Singh Bittu Vs. State of Punjab³*** the Supreme Court considering long incarceration of an undertrial-accused granted him bail who was incarcerated for 1 year despite being alleged to be in possession of commercial quantity of the alleged contraband poppy straw.

11. In the case of ***Mohd. Mobin Jahurul Hasan Manihar Vs. State of Maharashtra⁴*** - this Court on 20.01.2025 considering long incarceration of the under-trial accused granted him bail who was incarcerated for 1 year 11 months. The contraband in question was 220 gms of MD , the commercial quantity of which is 50 gms.

12. From the above, it is apparent that inspite of the stringent test to be met by the Accused person under Section 37 of the NDPS Act for being released on bail, it has been held that the same does not

1 2022 SCC OnLine SC 2068

2 Criminal Appeal No. 3349 of 2024

3 Cri. Appeal No.1204 of 2024

4 BA No.713 of 2024 decided on 20.01.2025

fetter grant of Bail to the Accused person on the ground of undue delay in completion of trial. It has been held that incarceration for substantial period of time generally militates against the right to speedy justice and right to life and liberty guaranteed under Article 21 of the Constitution of India and hence conditional liberty must override the statutory embargo under Section 37 of the NDPS Act.

13. In the above *prima facie* facts and circumstances of the present case the Applicant before me has made out a case for bail. In the absence of criminal antecedents, investigation being completed and chargesheet being filed and commencement and completion of trial in the near foreseeable future being doubtful entitles the Applicant for grant of bail.

14. The Bail Application stands allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (viii) Before his actual release from jail, Applicant shall furnish their address where he proposes to reside after his release from jail, to the concerned Police Station and also to the trial Court; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of

Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

15. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by the parties uninfluenced by the present order and strictly in accordance with law.

16. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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